REMARKS

This Amendment is a *bona fide* response to the Office Action identified above, and is further responsive in any other manner indicated below.

DEFECTIVE OFFICE ACTION/IMPROPER EXAMINATION

Applicant respectfully protests the improper examination/handling of the present application.

In the Office Action mailed 27 August 2004, various claims are rejected under obviousness-type double patenting based on US 6,298,028 B1. However, such reference has never been made of record in this application or in the parent application. Applicant respectfully submitted a Request for Corrected Action/Restart of the Period For Response under 37 CFR §1.104/MPEP §710.06 (copy of Request and receipt under MPEP §503 attached), which Request required prompt and corrective response by the Office. Since the Request was timely filed/entered (see the attached PAIR printout of the "Image File Wrapper" section), and the required correction was not made, Applicant respectfully submits that this Amendment is a *bona fide* response to the defective 27 August Action.

AMENDMENT TO THE SPECIFICATION

The specification has been amended herein to correctly identify the status of the present application as a "continuation" under 37 CFR §1.53(b) of the prior application. Applicant respectfully thanks the Examiner for pointing out the mischaracterization, and requests an updated/corrected Filing Receipt in which the status of the present application is characterized as a "continuation."

CLAIM OBJECTIONS OBVIATED VIA CLAIM AMENDMENT

Claim 20-33 were potentially objected to because of the Office Action concerns listed mid-page on page 2 of the Detailed Action. Traversal of the potential objection is appropriate, but amendments have been made to clarify Claims 20 and 27 from Claim 13, and therefore, reconsideration of all potential claim objections under 37 CFR §1.75 is respectfully requested.

REFUSAL TO CONSIDER REFERENCES - IMPROPER/TRAVERSED

The section titled "Information Disclosure Statement" on page 2 of the Action indicates entry of the Information Disclosure Statement (IDS) filed with the application on 29 July 2003, but indicates that the foreign documents listed therein have not been considered "since no copies of them have been provided." Applicant respectfully traverses such refusal to consider the references as improper examination.

The 29 July 2003 IDS was filed under 37 CFR §1.97(b), and conforms to 37 CFR §1.98(d), which states that no copies of the references cited in the application by Applicant or the Office are required if properly filed under 37 CFR §§1.97 and 1.98 in an earlier application which is properly identified in the IDS and which is relied upon under 35 USC §120. Further, this CFR is reiterated at MPEP §608IA2, which states that the Examiner will consider all information filed in the parent of a continuation under 37 CFR §.1.53(b), and Applicant need not even resubmit the information in the §1.53(b) Continuation unless it is desired for such information to be printed on the face of any patent issuing on the §1.53(b) Continuation. Applicant respectfully submits that the properly filed and entered information in the parent

application was submitted in the 29 July 2003 IDS, which also properly identified the parent application upon which benefit was claimed herein under 35 USC §120. Further, the parent application, which is still pending, contains all foreign documents listed in the 29 July 2003 IDS, and the same Examiner is assigned to the parent application as in the present case.

In view of the foregoing, Applicant respectfully submits that the refusal of the Examiner to consider the foreign documents listed in the 29 July 2003 IDS is improper, and requests that the Examiner return an initialed copy of the PTO-1449 containing the list of foreign documents to indicate their entry and consideration in the present application.

IMPROPER CLAIM LANGUAGE - TRAVERSED/UNSUPPORTED

It appears that claim language at Item 5 on page 5 of the 27 August Action is alleged to be incorrect in some manner. Applicant respectfully traverses all such allegations. More specifically, since the Action states, "the light-gathering ***point*** of the wavelengths are (sic - is) substantially coincided with one another." [*sic.*], it is presumed that the originally-emphasized language of "point" is being used to allege that the plural verb "are" is improper. However, it is respectfully noted, for example, in the attached excerpt from *The Columbia Guide to Standard American English* (1993), that the phrase "the light-gathering point" must logically be inherently plural, in agreement with the plural subject "wavelengths," and therefore the compound verb "are coincided" must be in the plural as well, to agree with the subject. Accordingly, Applicant respectfully submits that the language in the claims is proper Standard American English, and no correction thereto is necessary or proper.

PENDING CLAIMS

Claims 13-33 were pending in the application, under consideration and subject to examination at the time of the Office Action. Unrelated to any prior art, scope or rejection, appropriate Claims have been amended or added in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, the changes are simply clarified claims in which Applicant is presently interested. At entry of this paper, Claims 13-36 are now pending in the application for consideration and examination.

OBVIOUSNESS-TYPE DOUBLE PATENTING - TRAVERSED/NOT SUPPORTED

Applicant respectfully strongly traverses the double patenting rejections of the claims, as indicated at Items 1-4 spanning pages 2-4 of the defective 27 August Action for the following reasons.

Regarding traversal based on improper examination, Applicant respectfully notes the section hereinabove regarding the defective 27 August Action. Applicant respectfully submits that, in view of the fact that **since the reference relied upon in the obviousness-type double patenting is not of record in this application, ALL rejections based upon such reference are invalid**.

Regarding traversal based on lack of substantive grounds, the non-statutory double patenting rejection is respectfully traversed because such rejection does not provide the factual analysis required for such rejections under U.S. patent law, *i.e.*, the Examiner has not satisfied his/her initial burden to adequately support the rejection. More particularly, MPEP §804 states:

> Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 USC 103(a) rejection, the factual inquiries set forth in Graham v. John Deere Co., 383 US 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 USC 103 are employed when making an obviousness-type double patenting analysis. These factual inquiries are summarized as follows:
> (A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;
> (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;
> (C) Determine the level of ordinary skill in the pertinent art; and
> (D) Evaluate any objective indicia of non-obviousness.
>
> • • •
>
> Any obviousness-type double patenting rejection should make clear:
> (A) The differences between the invention defined by the conflicting claims-a claim in the patent compared to a claim in the application; and
> (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.

The rejection does not make clear the differences, or the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent. Instead, the Examiner has made contentions throughout that "it would have been obvious...." Applicant respectfully traverses such grounds for any §103 rejection, including the required grounds for any obviousness-type double patenting rejection, and respectfully points out that, as noted by the Court in *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988), whether a particular combination might be "obvious to try" is <u>not</u> a legitimate test of patentability, and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention <u>absent some teaching or suggestion supporting the combination</u>. Such requirements have been clarified in

the recent decision in *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002), wherein the Court, in reversing an obviousness rejection, indicated that deficiencies of the cited reference cannot be remedied with conclusions about what is "basic knowledge" or "common knowledge," since the Court pointed out:

> The Examiner's conclusory statements that "the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software" and that "another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial" do not adequately address the issue of motivation to combine. This factual question of motivation is immaterial to patentability, and could not be resolved on subjected belief and unknown authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of reference, simply to "[use] that which the inventor taught against its teacher."...Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion. (emphasis added)

Accordingly, Applicant respectfully submits that the alleged "analysis" provided in the 27 August 2004 Action is unsupported, and an actual analysis as required under 35 USC §103 guidelines should be provided in order for the Examiner to satisfy his/her initial burden to support the rejection, or the rejection should be withdrawn.

NON-STATUTORY DBL PAT. REJECT. - TERMINAL DISCLAIMER FILED

Although the obviousness-type double patenting rejection of Claims 13-30 as set forth at Items 1-4 spanning pages 2-4 (it is presumed that the claim identification "16, 23 and 230" at Item 4 on page 4 of the Action is actually "16, 23 and 30") of the Action has respectfully been strongly traversed, in order to travel a path of least resistance to obtaining a patent for the present application, submitted herewith is an

executed Terminal Disclaimer to overcome the non-statutory double patenting rejection. As a result of the foregoing, reconsideration and withdrawal of the double patenting rejection of the subject claims are respectfully requested.

The above statements and the filing of a Terminal Disclaimer should not be taken as any indication or admission that any of the rejections is valid, but is merely use of a procedural approach to obviate the rejection.

REJECTIONS UNDER 35 USC §§102 AND 103 - TRAVERSED

All 35 USC rejections *(i.e.,* the 35 USC §102 rejection of Claims 13, 17-209, 24-27 and 31-33 as being anticipated by Uchizaki *et al.* (US 6,646,975 B1); the 35 USC §103 rejection of Claims 14, 15, 21, 22, 28 and 29 as being unpatentable over Uchizaki *et al.* in view of JP 09-128794; and the §103 rejection of Claims 16, 23 and 30 as being unpatentable over Uchizaki *et al.* in view of Komma *et al.* (US 5,737,296 A)) are respectfully traversed. Such rejections have been rendered obsolete by the present clarifying amendments to Applicant's claims, and accordingly, traversal arguments are not appropriate at this time. However, Applicant respectfully submits the following to preclude renewal of any such rejections against Applicant's clarified claims.

All descriptions of Applicants disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously submitted by Applicant in any form, are repeated and incorporated herein by reference. Further, all Office Action statements regarding the prior art rejections are respectfully traversed.

To reiterate, the requirements to support a rejection under 35 USC §102 as indicated in the decision of *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999), require that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. As set out in the decision *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988), the court points out that the PTO has the burden under §103 to establish a *prima facie* case of obviousness, and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.

Therefore, in order to properly support a §102 anticipation-type rejection, the reference must teach the specific limitations of the claimed invention, and in order to properly support a §103 obviousness-type rejection, the reference not only must suggest the claimed features, but also must contain the motivation for modifying the art to arrive at an approximation of the claimed features. However, the cited art does not adequately support either a §102 anticipation-type rejection or a §103 obviousness-type rejection because it does not, at minimum, disclose (or suggest) the following discussed limitations of Applicant's claimed invention.

Applicant's independent claims have been further clarified to recite that Applicant's plurality of optical detectors include at least two different groupings of detectors, *i.e.*, focus error detectors which are commonly used for focus error detection for different wavelengths, and tracking-error/information-playback detectors which are used independently from one another for detection with respect to the different wavelengths. Applicant's disclosed and claimed invention is a blending/balancing of common-detector-usage allowing downsizing of the substrate,

and independent-detector-usage allows high-sensitivity for tracking error detection. Regarding new dependent Claims 34-36, such claims claim the shared amplifier configuration of the detectors 38a/38b shown in FIG. 3A.

Uchizaki *et al.* would not have disclosed or suggested such particular groupings of detectors (or shared amplifier), and instead, appears to disclose only crude 4-quadrant detectors as shown in Uchizaki *et al.*'s FIGS. 4A and 7B, for example. None of the other applied references cure the above major deficiency with respect to the primary Uchizaki *et al.* reference, and thus no combination of the applied references would have disclosed or suggested Applicant's disclosed and claimed invention.

In addition to the foregoing, the following additional remarks from Applicant's foreign representative are also submitted in support of traversal of the rejection and patentability of Applicant's claims.

Office Action comments allege that Uchizaki *et al.*, in FIG. 2 and at Column 8, lines 60 *et seq.*, include an optical recording/reproducing apparatus having a plurality of semiconductor lasers, collimating lens, focusing lens and elements includes a plurality of optical detectors. The Action further alleges that the light-gathering points of different wavelengths coincide with each other.

However, by the above clarifying amendments to Applicant's claims, the focus-error detection is carried out by a common optical detector irrespective of a wavelength utilizing a light-gathering point, and detection for a tracking error signal or information reproduced signal is carried out by utilizing an independent optical detector at each wavelength. By the structure of this invention, it is different from the

cited references in which the entire optical detector is common by utilizing a light-gathering point, and the present invention is not taught under 35 USC §102.

The amendments to the clarified claims are supported throughout the application as filed, *e.g.*, in the specification at page 13, line 22 through page 17, line 18, and in FIGs. 1 and 3. As shown, an optical detector of wavelength λa, λb for detecting focus error, optical detector for each wavelength λa, λb is made independent for tracking error signals to which a high sensitivity is required and information reproduced signal, while leads for each optical detector of wavelength λa, λb are made common, to retain detection sensitivity and downsize the optical detector substrate.

As mentioned hereinabove, this invention pays attention to a new problem, and solves it by the invention depicted in the claims. On the contrary, the cited references do not disclose a downsized semiconductor substrate adding the optimization of improved detecting sensitivity of the optical detector based on the difference of wavelengths. Therefore, the cited references are far from the unique structure of the present invention.

As a result of all of the foregoing, it is respectfully submitted that the applied art would not support either a §102 anticipation-type rejection or a §103 obviousness-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such §§102 and 103 rejections, and express written allowance of all of the rejected claims, are respectfully requested.

RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

EXAMINER INVITED TO TELEPHONE

The Examiner is invited to telephone the undersigned at the local D.C. area number 703-312-6600, to discuss an Examiner's Amendment or other suggested action for accelerating prosecution and moving the present application to allowance.

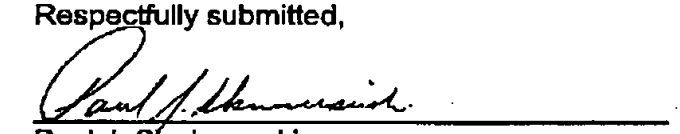
CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

This Amendment is being filed within the shortened statutory period for response set by the 27 August 2004 Office Action, and therefore, no Petition or extension fee is required. To whatever other extent is actually necessary, Applicant

respectfully petitions the Commissioner for an extension of time under 37 CFR §1.136. A Form PTO-2038 is submitted herewith in payment of additional claims fee and Statutory (Terminal) Disclaimer fee. Please charge any actual deficiency in fees to ATS&K Deposit Account No. 01-2135 (as Case No. 500.38285VX1).

Respectfully submitted,



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Attachments:
Copy of Request for Corrected Office Action and Restart of the Period for Response w/Copy of USPTO Auto-Reply Receipt
Copy of 11/27/2004 USPTO "Image File Wrapper" Section of PAIR for 10/628,364
Copy of The Columbia Guide to Standard American English, 1993, Columbia University Press
Statutory (Terminal) Disclaimer
Form PTO-2038 (Fee Codes 1202/1814)

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Commissioner for Patents
MAIL STOP: Amendment
POB 1450, Alexandria, Virginia 22313-1450
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RE: Shigeru NAKAMURA et al., US Appln No. 10/628,264
Atty Docket 500.39285VX1
Examiner A.M. Patton, Group Art 2883 - USPTO Conf. No. 5993

SUBMISSION OF REQUEST CORRECTED ACTION/RESTART OF PERIOD

Sir:

Applicant hereby submits the attached REQUEST FOR CORRECTED OFFICE ACTION AND RESTART OF THE PERIOD FOR RESPONSE (2 pages) for entry in the above-noted application.

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RE: Shigeru NAKAMURA *et al.*, US Appl'n No. 10/628,364
Att'y Docket 500.38285VX1
Examiner A.M. Psitos - Group AU 2653 - USPTO Conf. No. 5993

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POB 1450, Alexandria, Virginia 22313-1450
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RE: Shigeru NAKAMURA *et al.*, US Appl'n No. 10/628,364
Att'y Docket 500.38285VX1
Examiner A.M. Psitos - Group AU 2653 - USPTO Conf. No. 5993

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Patricia J. Jaquett

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Shigeru NAKAMURA *et al.*
Serial No.	:	10/628,364
Filed	:	29 July 2003
For	:	OPTICAL HEAD AND OPTICAL INFORMATION MEDIA RECORDING/REPRODUCING APPARATUS USING THE SAME
Group	:	2653
Examiner	:	A.M. Psitos
Conf. No.	:	5993

REQUEST FOR CORRECTED ACTION/RESTART OF PERIOD FOR RESPONSE

Mail Stop Amendment
Commissioner of Patents
POB 1450
Alexandria, Virginia 22313-1450

23 September 2004

Sir:

Applicant has received an Office Action mailed 27 August 2004 in connection with the above-identified application. Applicant respectfully submits that the Action is incomplete and defective in accordance with 37 CFR §1.104/MPEP §710.06 for the following reasons.

The obviousness-type double patenting rejections made at Items 1-4 spanning pages 2 and 3 of the Office Action indicate that various claims are rejected as being unpatentable over US 6,298,028 B1 in view of JP 09-128794. However, there has been no previous citation of US 6,298,028 B1 in either the prior or present applications, either to or by the Office, nor listing of the patent on the Form PTO-892 for the 27 August Office Action, nor copy of the reference supplied to Applicant.

In accordance with 37 CFR §1.104 and MPEP §710.06, the latter of which states in relevant *verbatim*, "[w]here the citation of a reference is incorrect or an Office action contains some other defect and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant," for the reasons set forth above, Applicant respectfully requests correction of the 27 August Action, and further respectfully requests restart of the period for response.

No Petition or fee is required for the filing of this Request.

Respectfully submitted,

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USPTO Internet Portal

10/628,364 **Optical head and optical information media recording/reproduction apparatus using the same**

Image File Wrapper

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Mail Room Date	Document Description	Page Count
09-24-2004	Miscellaneous Incoming Letter	3
08-27-2004	Non-Final Rejection	9
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08-27-2004	NPL Documents	28
08-27-2004	List of References cited by Applicant	1
08-27-2004	Bibliographic Data Sheet	1
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Kenneth G. Wilson (1923–). The Columbia Guide to Standard American English. 1993.

AGREEMENT OF SUBJECTS AND VERBS 2: COLLECTIVE NOUN PHRASES FOLLOWED BY PLURAL NOUNS

Proximity (attraction), notional agreement, and logic conspire here to make the verb choice plural: *A number of us are going to attend. A flock of starlings were making loud conversation.* But at Conversational levels the doubts of the speaker and in Edited English the stylebook's unwavering rule that subjects and verbs must agree in number can sometimes produce the singular: *A pair of hits in the bottom of the ninth usually turns the trick.* Either singular or plural is Standard in such constructions, although the plural usually seems more natural and comfortable. See AGREEMENT OF SUBJECTS AND VERBS (4); ATTRACTION; NOTIONAL AGREEMENT.

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